

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Section 68.4(a) of the Commission's Rules  
Governing Hearing Aid-Compatible Telephones

Petitions for Waiver of Section 20.19 of the  
Commission's Rules

WT Docket No. 01-309

PPR 12 2007

**MEMORANDUM OPINION AND ORDER**

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By the Commission:

**TABLE OF CONTENTS**

Heading	Paragraph #
I. INTRODUCTION .....	1
II. BACKGROUND .....	2
III. DISCUSSION .....	8
A. Waiver Requests From Petitioners Offering Dual-Band GSM Handset Models .....	10
1. Dobson Communications Corp. (Dobson) .....	10
2. SunCom Wireless, Inc. (SunCom) .....	13
3. Iowa Wireless Services, LLC dba i wireless and Related Licensees (Iowa Wireless) .....	17
4. Pine Cellular, Inc. (Pine) .....	20
5. South Slope Cooperative Telephone Company d/b/a South Slope Wireless (South Slope) .....	23
6. XIT Telecommunications & Technology, LTD d/b/a XIT Cellular (XIT) .....	25
7. AST Telecom, LLC dba Blue Sky Communications (Blue Sky) .....	29
8. C.T. Cube, L.P. dba West Central Wireless (CT Cube) .....	32
B. Waiver Requests from Petitioners Offering CDMA Handset Models .....	35
1. South Central Utah Telephone Association, Inc. (South Central Utah) .....	35
2. Virgin Mobile, USA LLC (Virgin Mobile) .....	40
3. WUE, Inc. ( W E ) .....	42
4. CC Communications (CC) .....	45
5. IT&E Overseas, Inc. (IT&E) .....	49
6. Uintah Basin Electronic Telecommunications d/b/a UBET Wireless (UBET Wireless) .....	53
C. Waiver Requests from Petitioners Operating TDMA Networks .....	51
1. Leaco Rural Telephone Cooperative, Inc. (Leaco) .....	57
2. SLO Cellular, Inc. d/b/a Cellular One of San Luis Obispo (SLO) and Entertainment Unlimited, Inc. (EU) .....	59
3. Cellular Phone of Kentucky, Inc (CPK) and Litchfield County Cellular, Inc. dba Ramcell of Kentucky LLC (Litchfield) .....	61
IV. CONCLUSION .....	72
V. ORDERING CLAUSES .....	73

## I. INTRODUCTION

1. In this Memorandum Opinion and Order, we address waiver requests filed by nineteen Tier II and Tier III wireless carriers' seeking relief from the Commission's hearing aid compatibility requirements for wireless digital telephones.<sup>1</sup> Specifically, each of the nineteen petitioning carriers requests waiver of the preliminary handset deployment requirement set forth in Section 20.19(c)(2)(i) of the Commission's rules, which provides that, by September 16, 2005, Tier II and Tier III carriers must have offered at least two wireless telephone handset models per air interface<sup>2</sup> that are certified as U3-rated under the ANSI C63.19-2001 or ANSI C63.19-2005 standard.<sup>3</sup> The petitioners seek extensions of time of varying lengths, ranging generally from sixty days (*i.e.*, until November 15, 2005) to one year (*i.e.*, until September 16, 2006), to come into compliance with the handset deployment requirement.<sup>4</sup> In addition, the petitioners generally request waiver of Section 20.19(f) of the Commission's rules, which specifies the labeling requirements for hearing aid-compatible handsets.<sup>5</sup> After careful consideration and pursuant to

<sup>1</sup> Tier II carriers are non-nationwide wireless radio service providers with more than 500,000 subscribers. Tier III carriers are non-nationwide wireless radio service providers with 500,000 or fewer subscribers. *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers, *Order to Stay*, 17 FCC Rcd 14841, 14847 ¶¶ 22-24 (2002) (*Non-Nationwide Carriers Order*).

<sup>2</sup> A list of each carrier's filings, and associated abbreviations, pertinent to this matter appears in the Appendix.

<sup>3</sup> The term air interface refers to the system that ensures compatibility between mobile radio service equipment, such as handsets, and the service provider's base stations. Currently, the leading air interfaces include Code Division Multiple Access (CDMA), Global System for Mobile Communications (GSM), Integrated Dispatch Enhanced Network (iDEN), and Time Division Multiple Access (TDMA).

<sup>4</sup> *See* 47 C.F.R. § 20.19(c)(2)(i). Specifically, Section 20.19(c)(2)(i)(A) of the Commission's rules provides that a Tier II or Tier III wireless carrier "must [i]nclude in its handset offerings at least two handset models per air interface that comply with § 20.19(b)(1) by September 16, 2005, and make available in each retail store owned or operated by the provider all of these handset models for consumers to test in the store." 47 C.F.R. § 20.19(c)(2)(i)(A). Section 20.19(b)(1) of the Commission's rules provides that a wireless handset is deemed hearing aid-compatible if, at minimum, it receives a U3 rating "as set forth in the standard document ANSI C63.19-2001[,], 'American National Standard for Methods of Measurement of Compatibility between Wireless Communications Devices and Hearing Aids.'" 47 C.F.R. § 20.19(b)(1). On April 25, 2005, the Commission's Office of Engineering and Technology announced that it would also certify handsets as hearing aid-compatible based on the revised version of the standard, ANSI C63.10-2005. Thus, applicants for certification may rely on either the 2001 version or 2005 version of the ANSI C63.19 standard. *See* OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature, *Public Notice*, 20 FCC Rcd 8188 (OET 2005).

<sup>5</sup> We note that some of the petitioners requesting waiver of the September 16, 2005 deadline filed subsequent petitions in 2006 seeking waiver relief from other hearing aid compatibility deadlines. *See* Modification of Ex Parte Status of Pending Petitions for Waiver of Hearing Aid Compatibility Requirements, WT Docket No. 01-309, *Public Notice*, DA 07-102 (WTB rel. Jan. 18, 2007) at Apps. B, C (listing petitioners seeking relief from August 1, 2006 deadline and September 18, 2006 deadline, respectively). We emphasize that, in this Memorandum Opinion and Order, we are not addressing the petitions seeking waivers of the 2006 deadlines, and are ruling solely on the petitions for waiver of the September 16, 2005 deadline.

<sup>6</sup> Section 20.19(f) of the Commission's rules provides that hearing aid-compatible handsets "shall clearly display the U-rating ... on the packaging material of the handset. An explanation of the ANSI C63.19-2001 U-rating system shall also be included in the owner's manual or as an insert in the packaging material for the handset." 47 C.F.R. § 20.19(f). We note that, since its 2005 draft version, the ANSI C63.19 technical standard has used an "M" nomenclature for the radio frequency (RF) interference rating rather than a "U," and a "T" nomenclature for the handset's inductive coupling rating, rather than a "UT." The Commission has approved the use of the "M" and "T" nomenclature and considers the MIT and U/UT nomenclatures as synonymous. *See* Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, *Order on Reconsideration and Further* (continued....)

our waiver authority, we grant waivers *nuncpro tunc* to five of the petitioners, grant in part and deny in part waivers *nunc pro tunc* to five of the petitioners, deny waivers to six of the petitioners, and dismiss the three remaining petitioners' waiver requests as unnecessary. Our actions today evince our longstanding commitment to ensuring that individuals with hearing disabilities have full access to, and helpful technical information about, digital wireless services.

## II. BACKGROUND

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission took a number of actions to further the ability of persons with hearing disabilities to access digital wireless telecommunications.<sup>7</sup> Among other actions, the Commission required manufacturers and digital wireless service providers to collectively take steps to increase the number of hearing aid-compatible handset models available, and established phased-in deployment benchmark dates for the offering of hearing aid-compatible digital wireless handset models.<sup>8</sup> In this regard, the Commission required each of these classes of entities that do not fall within the *de minimis* exception<sup>9</sup> to begin to offer hearing aid-compatible digital wireless handset models by September 16, 2005.<sup>10</sup> In connection with the offer of hearing aid-compatible handset models, the Commission also required entities to label the handsets with the appropriate technical rating, and to explain the technical rating system in the owner's manual or as part of the packaging material for the handset.<sup>11</sup> In order to monitor efforts to make compliant handsets available, the Commission required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation (on May 17, 2004, November 17, 2004, May 17, 2005, November 17, 2005, May 17, 2006, and November 17, 2006), and then annually thereafter through the fifth year of implementation (on November 19, 2007

(...continued from previous page)

*Notice of Proposed Rulemaking*, WT Docket No. 01-309, 20 FCC Rcd 11221, 11238 ¶ 33 (*Hearing Aid Compatibility Reconsideration Order*).

<sup>7</sup> Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, *Report and Order*, WT Docket No. 01-309, 18 FCC Rcd 16753 (2003); *Erratum*, 18 FCC Rcd 18047 (2003) (*Hearing Aid Compatibility Order*). The Commission adopted these requirements for digital wireless telephones under authority of a provision of the Hearing Aid Compatibility Act of 1988, codified at Section 710(b)(2)(C) of the Communications Act of 1934, as amended, 47 U.S.C. § 610(b)(2)(C).

<sup>8</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65; 47 C.F.R. § 20.19(c). In adopting these requirements, the Commission observed, *inter alia*, that "as wireless service has evolved to become increasingly more important to Americans' safety and quality of life, the need for persons with hearing disabilities to have access to wireless services has become critical." *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16757 ¶ 7.

<sup>9</sup> See 47 C.F.R. § 20.19(e)(1)-(2). The *de minimis* exception applies on a per air interface basis, and provides that manufacturers or mobile service providers that offer two or fewer digital wireless handsets in the U.S. are exempt from the requirements of the hearing aid compatibility rules. For mobile service providers that obtain handsets only from manufacturers that offer two or fewer digital wireless handset models in the U.S., the service provider would likewise be exempt from the hearing aid compatibility requirements. Manufacturers or mobile service providers that offer three digital wireless handset models must offer at least one compliant handset model. Mobile service providers that obtain handsets only from manufacturers that offer three digital wireless handset models in the U.S. are required to offer at least one compliant handset model.

<sup>10</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16780 ¶ 65. See also 47 C.F.R. § 20.19(c)(1)-(3).

<sup>11</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785 ¶¶ 83, 85-86. See also 47 C.F.R. § 20.19(f). In addition, to ensure that the rating information was actually conveyed to consumers prior to purchase, the Commission required digital wireless service providers to ensure that the U-rating of the handsets is available to such consumers at the point-of-sale, whether through display of the label, separate literature, or other means. See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16785 ¶ 87.

and November 17, 2008).<sup>12</sup> Accordingly, entities were required to file their fourth, fifth, and sixth semi-annual reports by November 17, 2005, May 17, 2006, and November 17, 2006, respectively.”

3. In June 2005, the Commission reconsidered certain aspects of the *Hearing Aid Compatibility Order* and modified the preliminary handset deployment benchmark specific to Tier I (*i.e.*, nationwide) wireless carriers to provide greater regulatory certainty, while simultaneously ensuring a broad array of choices for persons with hearing disabilities who seek to purchase hearing aid-compatible wireless phones.<sup>14</sup> Specifically, the *Hearing Aid Compatibility Reconsideration Order* established that by September 16, 2005, Tier I wireless carriers must offer four digital wireless handset models per air interface, or twenty-five percent of the total number of digital wireless handset models offered by the carrier nationwide, that meet a U3 rating.<sup>15</sup> The *Hearing Aid Compatibility Reconsideration Order*, however, did not modify the preliminary deployment benchmark or associated labeling requirements for Tier II or Tier III wireless carriers. Tier II and Tier III wireless carriers that do not fall within the *de minimis* exception, therefore, were required to include in their handset offerings at least two U3-rated handset models per air interface, and to comply with the associated labeling requirements, by September 16, 2005.<sup>16</sup>

4. In the *Hearing Aid Compatibility Reconsideration Order*, the Commission also modified the hearing aid compatibility requirements applicable to wireless carriers that operate TDMA networks and plan to overbuild them to employ alternative air interfaces.” Specifically, the Commission determined that these carriers would be considered compliant with the September 16, 2005, preliminary handset deployment benchmark if they: (1) offer two hearing aid-compatible handset models to customers that receive service from the overbuilt (*i.e.*, non-TDMA) portion of the network, (2) are overbuilding (*i.e.*, replacing) their entire network, and (3) complete the overbuild by September 18, 2006.<sup>18</sup> The Commission reasoned that modifying the hearing aid compatibility requirements in this manner was warranted because wireless carriers in general have migrated away from the TDMA air interface.” The Commission also noted that “a technology overbuild represents a considerable undertaking and requires a significant investment,” and that the limited relief afforded TDMA carriers would allow them to focus their resources primarily on upgrading their networks, and avoid unintended network shut-downs?

<sup>12</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶¶ 89-91; see also Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers, *Public Notice*, 19 FCC Rcd 4097 (WTB 2004).

<sup>13</sup> We cite to the status reports uniformly as the November 17, 2005 Reports, May 17, 2006 Reports, and November 17, 2006 Reports respectively, although some carriers actually filed their reports a day or more before the specified deadline. Although most of the references and citations refer to the November 17, 2005 status reports, we also have included in the record, and fully reviewed, the May 17, 2006 and November 17, 2006 status reports filed by the waiver applicants. We specifically discuss a carrier’s May 17, 2006 Report or November 17, 2006 Report only when we find that it contains relevant information that was not disclosed in the carrier’s November 17, 2005 Report.

<sup>14</sup> See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11235-36 ¶¶ 26-27.

<sup>15</sup> See *id.* at 11232. See also OET Clarifies Use of Revised Wireless Phone Hearing Aid Compatibility Standard Measurement Procedures and Rating Nomenclature, *Public Notice*, 20 FCC Rcd 8188 (OET 2005).

<sup>16</sup> See 47 C.F.R. § 20.19(c)(2)(i).

<sup>17</sup> See *Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11242-43 ¶¶ 48-50.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

5. In the *Cingular Waiver Order* released on September 8, 2005, the Commission provided a measure of additional relief for entities that offer dual-band GSM digital wireless handsets that operate in both the 850 MHz and 1900 MHz bands.<sup>21</sup> Pursuant to its waiver authority, the Commission ruled that it would accept, until August 1, 2006, the hearing aid compatibility compliance rating of the handsets for 1900 MHz operation as the overall compliance rating for the handset.\*<sup>22</sup> The Commission, however, imposed a number of reporting and consumer outreach conditions on carriers seeking to avail themselves of this temporary waiver relief.<sup>23</sup> Carriers taking advantage of the waiver are required, *in feralia*, to “ensure a thirty-day trial period or otherwise adopt an acceptable, flexible return policy for consumers seeking to obtain hearing aid-compatible GSM digital wireless handsets,” and must include detailed information in their November 17, 2005, and May 17, 2006, compliance reports “that describes and discusses with specificity efforts to ensure a thirty-day trial period or otherwise flexible return policy for consumers seeking to obtain hearing aid-compatible GSM digital wireless handsets.”<sup>24</sup> The Commission thus provided additional time for carriers and manufacturers to ensure that GSM digital wireless handsets operating in the 850 MHz band would be compliant with its rules when operating in that band. This action facilitated compliance with the deployment benchmark obligations by both manufacturers and carriers, including smaller, non-nationwide wireless carriers, that offer dual-band GSM digital wireless handsets.

6. Finally, on September 16, 2005, the Commission granted a waiver of the hearing aid compatibility deployment and labeling requirements to T-Mobile USA, Inc. (T-Mobile), a Tier I wireless carrier.<sup>25</sup> T-Mobile sought additional time within which to comply with the hearing aid compatibility requirements because of the last-minute inability of its vendors to provide requisite handsets.<sup>26</sup> In granting T-Mobile’s waiver request, the Commission determined that the limited relief sought by T-Mobile was consistent with the Commission’s goal of ensuring the expeditious introduction of hearing aid-compatible digital wireless handsets and would permit T-Mobile to have the necessary collateral marketing materials in place, including call-out cards in retail handset displays.”

7. The Tier II and Tier III petitioners generally contend that if Tier I wireless carriers, with their greater purchasing power, are unable to timely procure the requisite compliant handsets and complete the associated labeling requirements, it follows that the petitioners would face even greater difficulty in procuring such handsets, and that additional relief is appropriate.<sup>28</sup>

### III. DISCUSSION

8. We here address petitions filed by nineteen Tier II or Tier III wireless carriers on or shortly before September 16, 2005, seeking waivers of the hearing aid compatibility requirements taking effect on that date. Most importantly, the carriers contend generally that they were unable to comply with the

<sup>21</sup> See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, Cingular Wireless LLC Petition for Waiver of Section 20.19(c)(3)(i)(A) of the Commission’s Rules, *Memorandum Opinion and Order*, WT Docket No. 01-309, 20 FCC Rcd 15108 (2005) (*Cingular Waiver Order*).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 15117-18 ¶ 23

<sup>24</sup> *Id.* at 15118 ¶ 23

<sup>25</sup> See Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, T-Mobile USA, Inc. Petition for Waiver of Section 20.19(c)(3) of the Commission’s Rules, *Memorandum Opinion and Order*, WT Docket No. 01-309, 20 FCC Rcd 15147, 15150 ¶ 7 (2005) (*T-Mobile Waiver Order*).

<sup>26</sup> *Id.*

<sup>27</sup> See *id.* at 15151 ¶¶ 8-10

<sup>28</sup> See, e.g., Dobson Petition at 6; SunCom Petition at 6; CT Cube Petition at 6.

applicable preliminary handset deployment requirement because the requisite hearing aid-compatible handsets were unavailable to them as of September 16, 2005.<sup>29</sup> Pursuant to Section 1.925(b)(3) of the Commission's rules, the Commission may grant a request for waiver if the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant would be in the public interest, or, in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>30</sup>

9. In considering the instant waiver requests we have been mindful of our obligation to fairly determine whether the public interest would be served by granting a petitioner an exception to a rule of general applicability. We also have borne in mind that “[a]n applicant for waiver faces a high hurdle even at the starting gate” and that we are (obliged to take a “hard look” at the waiver proponent’s request.” In that regard, it is well established that a party seeking a waiver “must plead with particularity the facts and circumstances which warrant such action.”<sup>32</sup> If our hard look at a waiver request reveals only inadequate, conflicting and inconsistent information, then our inquiry need go no further because the petitioner has failed in its obligation to plead with particularity the facts and circumstances warranting its requested relief. Such is the case with several petitions under consideration herein, which we deny because each has not passed this threshold acceptability test. Evaluating the petitions under these standards, we grant waivers *nuncpro tunc* to five of the petitioners, grant in part and deny in part waivers *nuncpro tunc* to five of the petitioners, deny waivers to six of the petitioners, and dismiss the three remaining petitioners’ waiver requests as unnecessary. We conclude that our action today is consistent with “the Commission’s goal of ensuring the expeditious introduction of hearing aid-compatible digital wireless handsets.”<sup>33</sup>

#### A. Waiver Requests From Petitioners Offering Dual-Band GSM Handset Models

##### 1. Dobson Communications Corp. (Dobson)

10. As described in its initial waiver request filed on September 8, 2005, Dobson offers digital cellular services to a population base of 11.8 million people in sixteen states, ranging from Alaska to New York, utilizing the GSM and, to a limited extent, TDMA air interfaces.<sup>34</sup> In cellular markets located in Alaska, Kansas, Michigan, and Oklahoma, Dobson also offers Broadband PCS service.<sup>35</sup>

<sup>29</sup> The Commission has acknowledged in this proceeding that, “[i]n contrast to large carriers, smaller wireless carriers may be disadvantaged when they seek to acquire ... specialized handsets” because vendors treat the largest carriers, who place the largest orders for equipment, as priority customers. *See Hearing Aid Compatibility Reconsideration Order*, 20 FCC Rcd at 11233 ¶ 22, citing *Non-Nationwide Carriers Order*, 17 FCC Rcd at 14846-47 ¶ 20.

<sup>30</sup> See 47 C.F.R. § 1.925(b)(3). *See also WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990); 47 C.F.R. § 1.3.

<sup>31</sup> *See WAIT Radio v. FCC*, 418 F.2d 1153, 1158 (D.C. Cir. 1969), *cert denied*, 409 U.S. 1027 (1972); *see also* *Family Stations, Inc. v. DirecTV, Inc.*, *Order on Reconsideration*, 19 FCC Rcd 14777, 14780 (MB 2004).

<sup>32</sup> *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)

<sup>33</sup> *T-Mobile Waiver Order*, 20 FCC Rcd at 15151 ¶ 8.

<sup>34</sup> *See* Dobson Petition at 3. Dobson stated that it completed a GSM overlay of its TDMA network in 2004, except in certain newly acquired markets. *Id.* at n.7.

<sup>35</sup> *Id.* at 3. Dobson represented that, although its cellular service areas extend throughout portions of all sixteen states in which it operates, “Dobson’s PCS coverage overlaps with substantially less than half of Dobson’s cellular service areas, and none of Dobson’s five ‘regional service areas’ are covered ubiquitously by both cellular and PCS spectrum.” *Id.*

11. In its initial filing, Dobson requested a waiver of Section 20.19(c)(2)(i), explaining that U3-rated hearing aid-compatible handsets capable of operating in the 850 MHz band using the GSM protocol are not yet commercially available, and requested relief “for at least 60 days beyond the date when such compliant handsets are first made commercially available to Dobson for sale to its subscribers.”<sup>36</sup> On September 14, 2005, following the Commission’s release of the Cingular *Waiver Order*, Dobson filed a supplement modifying its waiver request to seek an extension only until November 15, 2005, *i.e.*, sixty days after the September 16, 2005 deadline.” On September 28, 2005, Dobson filed a further supplement in which it represented that it is in compliance with the handset deployment requirement;“ Dobson there stated that the Motorola V220 and V3 handsets it offers were certified as compliant on September 14 and 15, 2005, respectively.” In its further supplement, Dobson declared that it still required a waiver of the Section 20.19(f) labeling requirements, and requested a thirty-day extension, until October 16, 2005, to come into compliance with those requirements.<sup>40</sup> In its November 17, 2005 Report, Dobson confirmed that it had come into full compliance with the labeling requirements.“

12. The record, when analyzed *en toto*, leads us to conclude that Dobson did not require a waiver of the handset deployment requirement for its **GSM** handsets.<sup>42</sup> We further conclude that granting waiver relief to Dobson with respect to the labeling requirements is warranted due to the practical need for additional time within which to satisfy those requirements following a period of uncertainty regarding the certification of compliant GSM handsets in the days immediately prior to September 16, 2005.

<sup>36</sup> Dobson Petition at 1. Because we are waiving the Commission’s hearing aid compatibility rules pursuant to our authority under Sections 1.3 and 1.925 of the Commission’s Rules, it is unnecessary to reach Dobson’s argument that the Commission should grant a waiver pursuant to Section 710(b)(3) of the Communications Act of 1934, as amended, 47 C.F.R. § 610(b)(3). See Dobson Petition at 4.

<sup>37</sup> See Dobson Supplement at 2. Dobson emphasized that, prior to the release of the Cingular Waiver Order, there was no reason to purchase dual-band handsets that could meet a U3 or higher rating in the 1.9GHz band without regard to the 850 MHz band rating, because such handsets would not have satisfied GSM carriers’ hearing aid compatibility obligations until the Commission so provided in the Cingular Waiver Order. *Id.* at 1 n.2.

<sup>38</sup> See Dobson Further Supplement at 1-2. Dobson explained that, following the filing of the Dobson Supplement, it learned that two dual-band GSM handsets that it was currently offering to its subscribers – the Motorola V220 and the Motorola V3 handsets – had been certified as compliant pursuant to the revised standard adopted in the Cingular *Waiver Order*. *Id.* at 1 & n.3

<sup>39</sup> *Id.* at n.3.

<sup>40</sup> *Id.* at 2.

<sup>41</sup> See Dobson November 17, 2005 Report at 1; Dobson November 17, 2005 Report Supplement at 1. In fact, the Dobson November 17, 2005 Report suggests, but does not expressly state, that Dobson might not have violated the labeling requirements. Dobson states, “Handset units shipped by manufacturer starting September 16, 2005 contain a label affixed to the unit’s packaging indicating the M-rating of the phone, and an owner’s manual addendum is included in the packaging that discusses the rating system. For inventory shipped prior to that date, labels and an owner’s addendum were indirectly acquired from the manufacturer through a third party vendor; labels were then applied to existing inventory packaging and copies of the owner’s addendum were also included in the packaging.” Dobson November 17, 2005 Report at 1. Since Dobson has neither withdrawn the waiver request nor expressly indicated that a waiver of the labeling requirements is not needed, we do not dismiss the waiver request as moot.

<sup>42</sup> Dobson mentioned only GSM systems in its petition. However, in an unrelated proceeding, Dobson stated that it had acquired certain CDMA systems in Michigan and was converting them to GSM. See, *e.g.*, Dobson Cellular Systems, Inc., E911 Quarterly Report. CC Docket No. 94-102 at 3 (filed May 1, 2006) (recounting that Dobson was still in the process of transitioning from CDMA to GSM service those customers receiving service through facilities formerly licensed to RFB Cellular, Inc., Debtor-in-Possession, and Alpine Michigan F, LLC, Debtor-in-Possession). If Dobson is not in compliance, it should immediately notify the Commission and may file a waiver request, which request should contain an explanation of why it is untimely filed and specify the period, if any, that Dobson was or is out of compliance with the Commission’s rules.

Accordingly, we grant Dobson a waiver *nunc pro tunc* to extend the deadline by which it was required to come into compliance with the labeling requirements by an additional thirty days, until October 16, 2005. We recognize that the *Cingular Waiver Order* was adopted and released on September 8, 2005, eight days before the September 16, 2005 compliance deadline. Accordingly, manufacturers and carriers had little time prior to the compliance deadline in which to obtain certification of dual-band GSM handsets, to offer certified handsets, and to appropriately label the certified handsets. Dobson contends that certified U3-rated handsets were not available to smaller carriers at least until after the Commission released the *Cingular Waiver Order*. Dobson belatedly discovered that it in fact was in compliance with the handset deployment requirement by the specified deadline, and thus needed only a very brief extension of the labeling requirements deadline. The record indicates that Dobson has acted in good faith and with diligence to comply with the hearing aid compatibility requirements. Given that the Commission previously provided relief from the handset deployment requirement and associated labeling obligations to Tier I wireless carriers,<sup>43</sup> coupled with the fact that Dobson's non-compliance with the labeling requirements was of relatively short duration? we conclude the brief delay in compliance is properly viewed as *de minimis* and will not unduly deprive Dobson's subscribers of access to, and information about, hearing aid-compatible handsets.

## 2. SunCom Wireless, Inc. (SunCom)

13. As described in its initial waiver request, SunCom operates a wireless network predominantly covering North and South Carolina, with some areas of coverage in the bordering states of Virginia, Tennessee, and Georgia.<sup>45</sup> In late 2004, SunCom also commenced operations in Puerto Rico and the U.S. Virgin Islands.<sup>46</sup> SunCom has completed a GSM overbuild of its previously TDMA-only network, and now offers only GSM handsets to its subscribers.<sup>47</sup>

14. In its initial request, SunCom sought a waiver of Section 20.19(c)(2)(i) because U3-rated, dual-mode GSM handsets were not yet commercially available from its vendors, and specifically requested relief from the September 16, 2005 compliance deadline "such that, for each of the two [hearing aid-compatible] handsets SunCom is required to offer its customers, SunCom will have 60 days beyond the date on which a manufacturer commences production on handset units for SunCom, assuming that the actual production time does not exceed six weeks."<sup>48</sup> If the Commission was unwilling to grant an open-ended waiver, SunCom requested, in the alternative, that the Commission waive compliance until January 16, 2006.<sup>49</sup>

15. On October 14, 2005, SunCom updated its waiver request to limit its scope. It explained that it would "be able to come into compliance sooner than anticipated," and thus limited its requested waiver of both the handset deployment requirement and the Section 20.19(f) labeling requirements until December 1, 2005.<sup>50</sup> Finally, in a second update filed on January 6, 2006, SunCom notified the

<sup>43</sup> See *Cingular Waiver Order*; *T-Mobile Waiver Order*.

<sup>44</sup> Because Dobson's non-compliance has been remedied, granting Dobson's waiver request will not delay the ability of Dobson's subscribers with hearing disabilities to access hearing aid-compatible telephones on a going-forward basis.

<sup>45</sup> See SunCom Petition at 1.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 1, 8.

<sup>50</sup> See SunCom Update at 1-2 (requesting until December 1, 2005 to "offer a second HAC-compliant handset and to comply with the labeling requirements for that handset."). SunCom noted that it continues to rely on the relief (continued...)



Commission that it actually did come into compliance with both the handset deployment requirement and the labeling requirements as of December 1, 2005.<sup>51</sup>

16. We conclude that granting waiver relief to SunCom is warranted due to the uncertainty regarding the certification of compliant GSM handsets in the days immediately prior to September 16, 2005, as well as the practical need for additional time within which to satisfy the labeling requirement. Accordingly, we grant SunCom a waiver *nunc pro tunc* to extend the deadline by which it was required to come into compliance with the hearing aid compatibility requirements until December 1, 2005. Similar to the situation faced by T-Mobile,<sup>52</sup> SunCom's need for a waiver was predicated on the late availability of certified handsets. In addition, SunCom's period of non-compliance was less than ninety days, and SunCom represents it has been in full compliance with all hearing aid compatibility requirements since that date. Thus, grant of the waiver will not unduly deprive SunCom's subscribers of access to, and information about, hearing aid-compatible handsets.<sup>53</sup>

### 3. Iowa Wireless Services, LLC dba i wireless and Related Licensees (Iowa Wireless)

17. As described in its petition, Iowa Wireless is a Tier III PCS licensee that is owned by subsidiaries of Iowa Network Services, Inc. and T-Mobile USA, Inc., and provides service using the GSM air interface in Iowa and western Illinois.<sup>54</sup> Iowa Wireless initially requested a waiver of the hearing aid compatibility requirements "until such time as ... compatible handsets that meet the Commission's [hearing aid compatibility] standards are commercially available from the manufacturers."<sup>55</sup> In addition, Iowa Wireless represented in its waiver request that it anticipated reporting full compliance with the hearing aid compatibility rules in its November 17, 2005 Report.<sup>56</sup>

(...continued from previous page)

provided to GSM carriers in the *Cingular Waiver Order* in achieving compliance. *Id.* at 1. Like Dobson, SunCom represented that it would achieve compliance by offering the Motorola V220 and the Motorola V3 handsets. *Id.* at 1-2. *See also* SunCom November 17, 2005 Report at 1

<sup>51</sup> *See* SunCom Second Update at 1

<sup>52</sup> *See T-Mobile Waiver Order*, 20 FCC Rcd at 15151 ¶¶ 8-10.

<sup>53</sup> SunCom stated in its November 17, 2005 Report that, as of November 1, 2005, it had implemented a thirty-day return policy only in Puerto Rico, and had a 15-day return policy elsewhere. *See* SunCom November 17, 2005 Report at 2. As indicated above, however, the *Cingular Waiver Order* states that any entity availing itself of the relief afforded therein "must ensure a thirty-day trial period or otherwise adopt an acceptable, flexible return policy for consumers seeking to obtain hearing aid-compatible GSM digital wireless handsets." *Cingular Waiver Order*, 20 FCC Rcd at 15118 ¶ 23. In its Second Update, SunCom affirmatively represented, without qualification, that "[h]earing device users who purchase one of [the two hearing aid-compatible handsets offered by SunCom], but later experience compatibility problem, have 30 days in which to return the handset for a refund and/or cancel their service without incurring an early termination fee." SunCom Second Update at 2. Based on SunCom's submissions, therefore, it appears that SunCom implemented a uniform 30-day return policy at some point between November 2, 2005 and the filing of its Second Update on January 6, 2006. Although the record is thus unclear as to the specific date when SunCom satisfied the return policy condition that is a prerequisite to availing itself of relief pursuant to the *Cingular Waiver Order*, it does appear that SunCom failed to abide by that condition as of the September 16, 2005 compliance date by a short but uncertain time. Given the short period of its non-compliance with this condition, we grant SunCom a waiver of the conditions *sua sponte*.

<sup>54</sup> *See* Iowa Wireless Petition at 1-3.

<sup>55</sup> *Id.* at 1.

<sup>56</sup> *Id.* at 4.

18. In its November 17, 2005 Report, Iowa Wireless stated that it “opted into the temporary relief for GSM dual band handsets” and that it had implemented “a 30-day return policy for customers seeking to obtain hearing aid-compatible handsets.”<sup>57</sup> In addition, Iowa Wireless stated that it offers two compliant handset models, the Motorola V220 and Motorola V3, in all 172 of its sales locations.<sup>58</sup> Iowa Wireless added, however, that it still required additional time to comply with the labeling requirements. Finally, in an April 17, 2006 filing, Iowa Wireless clarified that the Motorola V3 handset had been available to its customers as of August 29, 2005, that the Motorola V220 handset had been available to its customers as of October 4, 2004, and that both of these handsets had been properly labeled as of December 7, 2005.<sup>59</sup> Accordingly, Iowa Wireless has established that it was fully compliant with the Commission’s hearing aid compatibility requirements, including its labeling requirements, as of December 7, 2005.

19. In light of this record, we conclude that granting Iowa Wireless the limited waiver relief it seeks is warranted when considering the uncertainty regarding the certification of compliant GSM handsets in the days immediately prior to September 16, 2005, as well as the practical need for additional time within which to satisfy the associated labeling requirement. Accordingly, we grant Iowa Wireless a waiver *nunc pro tunc* to extend the deadline by which it was required to come into compliance with all of the hearing aid compatibility requirements, including the labeling requirements, until December 7, 2005. We recognize that the **Cingular Waiver Order** was adopted and released on September 8, 2005, eight days before the September 16, 2005 compliance deadline. Manufacturers and smaller carriers such as Iowa Wireless had little time prior to the compliance deadline in which to obtain certification of dual-band GSM handsets, to offer certified handsets, and to appropriately label the certified handsets. Given that the relief afforded is limited in scope – covering only the handset labeling requirements – and remedies a short period of past non-compliance, grant of this waiver request will not unduly deprive Iowa Wireless’ subscribers of access to, and information about, hearing aid-compatible handsets.

#### 4. Pine Cellular, Inc. (Pine)

20. Pine represented that it is a small carrier providing service using TDMA and GSM technology in Oklahoma Rural Service Area (RSA) No. 10.<sup>60</sup> Pine also stated that it had overbuilt its entire TDMA network with the **GSh4** air interface but continues to provide service over its TDMA network to its customers who have not upgraded to GSM handsets.<sup>61</sup> Pine requested a six-month extension of the September 16, 2005 compliance deadline, until March 16, 2006, citing the unavailability of certified compliant handsets as the reason for the request.<sup>62</sup> In particular, with respect to the need for an additional six months, as opposed to some lesser period, Pine stated that its experience has been that it can take up to four months after handsets first become available before a Tier III wireless carrier can expect delivery.<sup>63</sup> On December 6, 2005, Pine amended its waiver request, stating “[o]n December 5, 2005, Pine obtained and has made available for sale two GSM handsets meeting at least a U3 interference

<sup>57</sup> Iowa Wireless November 17, 2005 Report at 2.

<sup>58</sup> *Id.* at 1

<sup>59</sup> See Iowa Wireless Compliance Report at 1-2

<sup>60</sup> See Pine November 17, 2005 Report at 1

<sup>61</sup> See Pine Petition at 1. Since Pine has completed an overbuild of its TDMA network, it may avail itself of the relief granted in the **Hearing Aid Compatibility Reconsideration Order**, and accordingly is not required to offer hearing aid-compatible TDMA handset!;. Pine therefore needs a waiver only of the Section 20.19(c)(2)(i)(B)(1) requirement to offer two compliant handset models to customers receiving service from the overbuilt, *i.e.*, non-TDMA, portions of its network.

<sup>62</sup> *Id.* at 1-3.

<sup>63</sup> *Id.* at 6-7.

rating” and requesting relief “only until December 5, 2005.”<sup>64</sup> More recently, on April 14, 2006, Pine indicated that both the handset deployment and the labeling requirements were satisfied as of December 5, 2005.<sup>65</sup> In its May 17, 2006 Report, however, Pine stated that of the two hearing aid-compatible handsets it offered, one Motorola model and one Nokia model, neither had “a label attached on the handset’s packaging indicating the U-rating of the wireless telephone. None of the handset packaging contains inserts describing the U-rating system.”<sup>66</sup> On May 25, 2006, Pine clarified that “it mistakenly identified [TTY] labeling and insert information as the HAC labeling and insert information” in the April 14, 2006 letter.<sup>67</sup> Pine also clarified that its May 17, 2006 Report “correctly indicated that the HAC labeling and insert information was missing from the handset packaging.”<sup>68</sup> Pine did not, however, request any further waiver beyond December 5, 2005. Finally, in its November 17, 2006 Report, Pine indicated that, in addition to a hearing aid compatible Motorola model, the Motorola V3i, it now offered the LG 1400i handset, which it indicated was hearing aid compatible, in place of the Nokia handset it had offered previously, and it stated that both its Motorola V3i and LG 1400i handsets included appropriate labels and inserts.<sup>69</sup>

21. In light of this record, we conclude that granting only partial waiver relief to Pine is warranted due to the uncertainty regarding the certification of compliant GSM handsets in the days immediately prior to September 16, 2005. Accordingly, we grant Pine a waiver *nunc pro tunc* to extend the deadline by which it was required to come into compliance with the handset deployment requirement until December 5, 2005. We recognize that the *Cingular Waiver Order* was adopted and released on September 8, 2005, eight days before the September 16, 2005, compliance deadline. Manufacturers and smaller carriers such as Pine had little time prior to the compliance deadline in which to obtain and offer certified dual-band GSM handsets. In particular, we are persuaded by Pine’s claim that it could not obtain compliant handsets by the September 16, 2005, deadline and that, once available, such handsets often are not delivered to smaller carriers as quickly as they are delivered to larger carriers. Under the circumstances, we conclude that providing Pine with a waiver extending the compliance deadline until December 5, 2005, is a reasonable accommodation to market realities, consistent with precedent, and in accord with the Section 1.925(b)(3)(ii) waiver standard. Further, given that the relief afforded here covers only a short period of past non-compliance, grant of the waiver will not unduly deprive Pine’s subscribers of access to hearing aid-compatible handsets.

22. With respect to the associated labeling requirements, however, we find that the record does not establish that Pine merits a waiver. Based on the record, we find that Pine did not come into compliance with the labeling requirements for hearing aid-compatible handsets until some time between May 25, 2006 and November 14, 2006, the date on which Pine filed its November 17, 2006 Report. Although Pine states in its May 25, 2006 Letter that it “contacted . . . Motorola and Nokia to try and obtain labeling and inserts[,]”<sup>70</sup> it does not appear that Pine did so in a timely fashion that would have enabled it to meet its labeling obligations by or close to the deadline, and we find that Pine has failed to demonstrate unusual or unique circumstances warranting relief from the labeling requirements for such a

<sup>64</sup> Pine Amendment at 1.

<sup>65</sup> See Pine April 14, 2006 Letter at 1 (“Pine also confirms that, effective December 5, 2005, the HAC GSM handsets Pine offers for sale are labeled with the performance ratings of the compliant phones and the associated packaging contains the technical specifications of the handset and description of the U-rating system”).

<sup>66</sup> Pine May 17, 2006 Report at 2.

<sup>67</sup> Pine May 25, 2006 Letter at 1.

<sup>68</sup> *Id.*

<sup>69</sup> Pine November 17, 2006 Report at 2

<sup>70</sup> Pine May 25, 2006 Letter at 1

protracted period of time. Moreover, we find that Pine's action in "plac[ing] signs in the display area indicating which of the handsets . . . are HAC compliant" does not excuse its failure to fully comply with the labeling requirements." Such displays may have satisfied Pine's obligation to ensure that rating information is conveyed to the consumer, but they do not satisfy the independent obligation under Section 20.19(f) to ensure that all hearing aid-compatible handsets have the appropriate packaging label and internal information.<sup>72</sup> Thus, we find that Pine has not made the requisite showing to justify a waiver of Section 20.19(f) of the Commission's rules." We therefore deny this aspect of the Pine Petition and refer Pine's apparent violation to the Commission's Enforcement Bureau.

**5. South Slope Cooperative Telephone Company d/b/a South Slope Wireless (South Slope)**

23. As described in its petition, South Slope is a rural telephone cooperative with headquarters in North Liberty, Iowa. Employing a GSM air interface, South Slope is the licensee of Broadband PCS Stations WPOL801 (A-Block, Partitioned Submarket 82 – Des Moines-Quad Cities MTA), WPOL802 (A-Block, Partitioned Submarket 86 – Des Moines-Quad Cities MTA), and WPWM732 (A-Block, Partitioned Submarket 262 – Des Moines-Quad Cities MTA).<sup>74</sup> South Slope requested a waiver that would extend the September 16, 2005 compliance deadline by one year.<sup>75</sup> Like other waiver applicants, South Slope cited the unavailability of U3-rated handsets as grounds for its request.<sup>76</sup> On December 1, 2005, South Slope amended its waiver request to inform the Commission that, although unknown to South Slope at the time it initially requested a waiver, two of South Slope's handsets offered as of September 16, 2005, were in fact certified as compliant.<sup>77</sup> South Slope asserted, therefore, that it never required a waiver of the handset deployment requirement, but that it nonetheless still required a waiver of the Section 20.19(f) labeling requirements to the extent that the certification rating "was not clearly displayed on the packaging material, and to the extent that an explanation of the ANSI C63.19 rating system was not included in the owner's manual or as an insert in the packaging material for the handset."<sup>78</sup> It requested an extension of the labeling requirements compliance deadline to December 31, 2005.<sup>79</sup>

24. In light of these facts, we conclude that granting waiver relief to South Slope is warranted due to the uncertainty regarding the certification of compliant GSM handsets in the days immediately prior to September 16, 2005, as well as the practical need for additional time within which to satisfy the associated labeling requirements. Accordingly, we grant South Slope a waiver *nunc pro tunc* to extend

<sup>71</sup> *Id.*

<sup>72</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787 ¶ 87; 47 C.F.R. § 20.19(f).

<sup>73</sup> In any event, we note that Pine has not even requested a waiver of any of the hearing aid compatibility rules to cover periods of noncompliance after December 5, 2005.

<sup>74</sup> See South Slope Petition at 1-2.

<sup>75</sup> *Id.* at 1.

<sup>76</sup> *Id.* at 4 (asserting that the basis for the waiver request "is starkly simple and can be concisely stated: There are no HAC compliant digital wireless telephones available for purchase by small GSM carriers, such as South Slope, that meet a U3 rating under the ANSI Standard C63.19 for radio frequency interference").

<sup>77</sup> See South Slope December 1, 2005 Amendment at 3. The handset models in question are the Motorola V220 and V3. *Id.* It was apparently only after the filing of its November 17, 2005 Report that South Slope recognized that it had been in compliance with the handset deployment requirement as of September 16, 2005. See South Slope November 17, 2005 Report.

<sup>78</sup> South Slope December 1, 2005 Amendment at 3-4.

<sup>79</sup> *Id.* at 4.

the deadline by which it was required to come into compliance with all of the hearing aid compatibility requirements, including the labeling requirements, until December 31, 2005.<sup>80</sup> We recognize that the *Cingular Waiver Order* was adopted and released on September 8, 2005, eight days before the September 16, 2005, compliance deadline. Accordingly, manufacturers and smaller carriers such as South Slope had little time prior to the compliance deadline in which to obtain certification of dual-band GSM handsets, to offer certified handsets, and to appropriately label the certified handsets. This relief is similar to the relief provided to T-Mobile,<sup>81</sup> *supra*, and the diligence of South Slope's compliance efforts is evidenced by the fact that it was able to remedy its deficiencies more quickly than it originally anticipated. Given that the relief afforded here is limited in scope – covering a short period of past non-compliance of only the labeling requirements – grant of the waiver will not unduly deprive South Slope's subscribers of access to, and information about, hearing aid-compatible handsets.

## 6. XIT Telecommunications & Technology, LTD d/b/a XIT Cellular (XIT)

25. XIT represented that it is a small carrier that provides CMRS in Texas.” XIT also stated that it has recently overbuilt its entire “TDMA network with the GSM air interface but continues to provide service over its TDMA network to its customers who have not upgraded to GSM handsets.”<sup>83</sup> XIT requested a six-month extension of the September 16, 2005 compliance deadline, until March 16, 2006, citing the unavailability of certified compliant handsets as the reason for the request.<sup>84</sup> In particular, with respect to the need for an additional six months, as opposed to some lesser period, XIT stated that its experience has been that it can take up to four months after handsets first become available before a Tier III wireless carrier can expect delivery.<sup>85</sup> XIT's November 17, 2005 Report offers no information as to whether XIT elected to opt into the relief offered pursuant to the *Cingular Waiver Order*, and states, “XIT only sells one handset model that meets the Commission's hearing aid compatibility requirements at this time.”<sup>86</sup> XIT also reported that “[n]one of the handsets that XIT has available for sale to its subscribers have a label attached on the handset's packaging indicating the U-rating of the wireless telephone. None of the handset packaging contains inserts describing the U-rating system.”

26. More recently, on April 25, 2006, XIT submitted an amendment to its petition, requesting that the requested relief “be extended through April 25, 2006.” In its amendment, XIT explained that on March 15, 2006, it “obtained and made available for sale the Nokia 6101, a handset it believed met at least a U3 interference rating” but that on April 13, 2006, it “learned that the Nokia 6101 that it had

<sup>80</sup> South Slope clarified its May 17, 2006 Report with an amendment stating that it “promptly completed the packaging labeling and insert process for its inventory of M3-rated wireless phones, prior to December 15, 2005.” See South Slope May 23, 2006 Amendment.

<sup>81</sup> See *T-Mobile Waiver Order*, 20 FCC Rcd at 15151 ¶¶ 8-10.

<sup>82</sup> See XIT November 17, 2005 Report at 1

<sup>83</sup> See XIT Petition at 1. As XIT has completed an overbuild of its TDMA network, it may avail itself of the relief granted in the *Hearing Aid Compatibility Reconsideration Order*, and accordingly is not required to offer hearing aid-compatible TDMA handsets. XIT therefore needs a waiver only of the Section 20.19(c)(2)(i)(B)(1) requirement to offer two compliant handset models to customers receiving service from the overbuilt, *i.e.*, non-TDMA, portions of its network.

<sup>84</sup> *Id.* at 1-3.

<sup>85</sup> *Id.* at 7.

<sup>86</sup> XIT November 17, 2005 Report at 1

<sup>87</sup> *Id.* at 2

<sup>88</sup> XIT Amendment at 1. We note that this filing was submitted by “Texas RSA-1 Limited Partnership d/b/a XIT Cellular,” but does not explain, or otherwise account for, the change.

available for sale was not hearing aid-compatible ... .”<sup>89</sup> XIT added that, on the same day, April 13, 2006, it began offering for sale the HAC compliant Nokia 6061.<sup>90</sup> XIT argued that its requested extension satisfies the Commission’s waiver standards because of the carrier’s “good faith efforts to make available for sale two HAC compliant handsets as soon as possible and the unusual circumstances prompting the need for its request.””

27. In a separate letter also filed on April 25, 2006, XIT notified the Commission that it had availed itself of the relief offered pursuant to the *Cingular Waiver Order*, and reported that, effective September 30, 2005, the Motorola V3 handsets XIT offers for sale are labeled with the performance rating of the handset and description of the U-rating system, and that the Nokia 6061 handsets it offers for sale are labeled with the performance rating of the handset and the associated packaging contains the technical specifications of the handset and description of the U-rating system.”

28. We conclude that XIT has failed to demonstrate unique or unusual circumstances, or the existence of any other factor, warranting grant of the requested waiver pursuant to the Section 1.925(b)(3) standard. It appears that, had not XIT held the mistaken belief that the Nokia 6101 it offered was hearing aid-compatible, it could have come into compliance with the hearing aid compatibility rules by March 15, 2006, within the six-month waiver period it requested initially.<sup>93</sup> We disagree with XIT that, under these circumstances, grant of XIT’s amended waiver petition is warranted under any prong of the Section 1.925 standard.<sup>94</sup> In particular, we disagree with XIT’s assertion that enforcement of the preliminary handset deployment requirement would be inequitable in light of XIT’s good faith efforts and the “unusual circumstances prompting the need for [its] request.”<sup>95</sup> XIT argues that its mistake regarding the hearing aid compatibility of the Nokia 6101 constitutes a unique or unusual circumstance and that it would not serve the public interest to enforce the hearing aid compatibility requirements against XIT due to that mistake. We disagree. XIT does not cite to any precedent to support its argument, and we do not believe that a carrier error of this nature is sufficient, by itself, to warrant waiver relief. The public interest would not be served were the Commission to excuse violations of its requirements when due diligence would have prevented such a mistake in the first place. In light of this analysis, we find that XIT has not made the requisite showing to justify a waiver of the Commission’s hearing aid compatibility rules. We therefore deny the XIT Petition, as amended, and refer XIT’s apparent violation of the hearing aid Compatibility requirements to the Commission’s Enforcement Bureau.

#### 7. AST Telecom, LLC dba Blue Sky Communications (Blue Sky)

29. As described in its waiver request and its November 17, 2005 Report, Blue Sky is a small carrier that provides commercial mobile radio service (CMRS) in American Samoa, and utilizes the GSM air interface.<sup>96</sup> Blue Sky requested a six-month extension of the September 16, 2005 compliance

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<sup>89</sup> *Id.* at 2.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 3

<sup>92</sup> XIT Letter at 1. Like the XIT Amendment, this filing was submitted by “Texas RSA-1 Limited Partnership d/b/a XIT Cellular,” but does not explain, or (otherwise account for, the change.

<sup>93</sup> See XIT Amendment at 2. Indeed, XIT’s failure to detect that the Nokia model 6101 was not hearing aid-compatible is difficult to understand because the conceded absence of labeling with the U3 rating surely should have alerted XIT to the need for further inquiry concerning the handset’s compatibility with hearing aids.

<sup>94</sup> *Id.* at 3.

<sup>95</sup> *Id.*

<sup>96</sup> See Blue Sky November 17, 2005 Report at 1; Blue Sky Petition at 2.

deadline, until March 16, 2006, citing the unavailability of certified compliant handsets as the reason for the request.” In particular, with respect to the need for an additional six months, as opposed to some lesser period. Blue Sky stated that its experience has been that it can take up to four months after handsets first become available before a Tier III wireless carrier can expect delivery.<sup>98</sup> Blue Sky’s November 17, 2005 Report offers no information as to whether Blue Sky elected to opt into the relief offered pursuant to the *Cingular Waiver Order*, and states “only one of the phones Blue Sky has been able to obtain from its third party vendor meets the Commission’s hearing aid compatibility requirements at this time.”<sup>99</sup>

30. On April 11, 2006, Blue Sky filed an amendment notifying the Commission that it had availed itself of the relief afforded to wireless carriers pursuant to the *Cingular Waiver Order*.<sup>100</sup> Further, Blue Sky stated, “[o]n March 13, 2006, Blue Sky obtained and has made available for sale two GSM handsets [the Nokia 6061 and the Motorola V3] meeting at least a U3 interference rating” and requesting relief “only until March 13, 2006.”<sup>101</sup> On April 25, 2006, however, Blue Sky reported that “effective March 13, 2006, ... the Motorola V3 ... handsets ... which Blue Sky offers for sale, are not labeled with the performance rating of the handset and the associated packaging does not contain the technical specifications of the handset and description of the U-rating system.”<sup>102</sup> In its November 17, 2006 Report, Blue Sky stated that, of the two hearing aid-compatible handset models it offered, the Motorola V3 handsets still did not include appropriate labels or inserts.<sup>103</sup>

31. We conclude that Blue Sky has failed to demonstrate unique or unusual circumstances, or the existence of any other factor, warranting grant of the requested waiver pursuant to the Section 1.925(b)(3) standard. Blue Sky’s April 25, 2006 Letter and November 17, 2006 Report reveal that Blue Sky is not, in fact, in compliance with the hearing aid compatibility rules. Although Blue Sky reported the offering of two compliant handsets on March 13, 2006, the carrier also represented that it still was not compliant with the associated labeling requirements as of November 17, 2006.<sup>104</sup> Blue Sky has not explained why, as of November 17, 2006, it has still failed to come into full compliance with the hearing aid compatibility requirements notwithstanding the ability of most other GSM carriers, including other Tier III GSM carriers, to come into compliance by this date. As discussed above, the record indicates that compliant GSM handsets were available to small carriers between September and December 2005,<sup>105</sup> and that a broad array of GSM carriers offered certified compliant handsets, and complied with the Section 20.19(f) labeling requirements, well before November 17, 2006. Blue Sky has failed to explain why it could not likewise achieve compliance with the hearing aid compatibility requirements, if not by the September 16, 2005 deadline, then at least within a shorter period after that deadline. In particular, Blue Sky offers no reasons for its inability to provide the requisite labeling for the Motorola V3 handset it

<sup>97</sup> See Blue Sky Petition at 1-3.

<sup>98</sup> *Id.* at 6

<sup>99</sup> Blue Sky Report November 17, 2005, at 1.

<sup>100</sup> Blue Sky Amendment at 1

<sup>101</sup> *Id.* at 1 & n.2.

<sup>102</sup> Blue Sky Letter at 1

<sup>103</sup> Blue Sky November 17, 2006 Report at 2.

<sup>104</sup> As noted above, Blue Sky represented in its April 11, 2006 Amendment that it was offering the Nokia 6061 handset as one of the two handsets it was offering to comply with the handset deployment requirement. In its May 17, 2006 Report, however, Blue Sky does not include the Nokia 6061 handset in the list of handsets it currently offers. See Blue Sky May 17, 2006 Report at 1. Although its May 17, 2006 Report was filed only a little more than one month after the filing of its April 11, 2006 Amendment, Blue Sky offers no explanation for the discrepancy.

<sup>105</sup> See discussion of South Slope and Pine, *supra*

offers. Blue Sky also suggests, but does not expressly state, that it may be in violation of the conditions associated with the relief offered pursuant to the *Cingular Waiver Order*.<sup>106</sup> Further, despite its failure to come into full compliance with the labeling requirements as of November 17, 2006, Blue Sky has never requested an extension of its initial six-month waiver request, which would have expired on March 16, 2006. Based on this record, we find that Blue Sky has not made the requisite showing to justify a waiver of the Commission's hearing aid compatibility rules. We therefore deny the Blue Sky Petition and refer Blue Sky's apparent violation of the hearing aid compatibility requirements to the Commission's Enforcement Bureau.

#### 8. C.T. Cube, L.P. dba West Central Wireless (CT Cube)

32. CT Cube represented that it is a small carrier that provides CMRS in Texas. "CT Cube also stated that it has overbuilt much of its TDMA network with the GSM air interface and continues to provide service over its TDMA network to its customers who have not upgraded to GSM handsets." CT Cube requested a six-month extension of the September 16, 2005 compliance deadline, until March 16, 2006, citing the unavailability of certified compliant handsets as the reason for the request." In particular, with respect to the need for an additional six months, as opposed to some lesser period, CT Cube stated that its experience has been that it can take up to four months after handsets first become available before a Tier III wireless carrier can expect delivery." CT Cube's November 17, 2005 Report offered no information as to whether the carrier elected to opt into the relief offered pursuant to the *Cingular Waiver Order*, and stated "only one of the phones [CT Cube] has been able to obtain from its third party vendor meets the Commission's hearing aid compatibility requirements at this time."

33. On January 25, 2006, CT Cube filed an amendment notifying the Commission that, "[o]n January 1, 2006, [CT Cube] obtained and has made available for sale two GSM handsets meeting at least a U3 interference rating" and requesting relief "only until January 1, 2006."<sup>112</sup> On April 25, 2006, CT Cube notified the Commission that it had availed itself of the relief afforded to wireless carriers pursuant to the *Cingular Waiver Order*.<sup>113</sup> On that date, CT Cube also reported, however, that "the LG L1400i handsets ... which CT Cube offers for sale, are not labeled with the performance rating of the handset and the associated packaging does not contain the technical specifications of the handset and description of

<sup>106</sup> See Blue Sky Letter at 1 (stating that "Blue Sky will provide detailed information on the status of its efforts to provide dual-band handsets that will be [hearing aid-compatible] in the 850MHz band as well as the 1900MHz band, and on the status of its continued efforts to comply with the aforementioned return policy and consumer outreach conditions, in its May 17, 2006 HAC compliance report").

<sup>107</sup> See CT Cube November 17, 2005 Report at 1

"See CT Cube Petition at 1. As CT Cube is in the process of overbuilding its TDMA network, it may avail itself of the relief granted in the *Hearing Aid Compatibility Reconsideration Order*, and accordingly is not required to offer hearing aid-compatible TDMA handsets. CT Cube therefore needs a waiver only of the Section 20.19(c)(2)(i)(B)(1) requirement to offer two compliant handset models to customers receiving service from the overbuilt, i.e., non-TDMA, portions of its network.

<sup>109</sup> *Id.* at 1-3.

<sup>110</sup> *Id.* at 7

<sup>111</sup> CT Cube November 17, 2005 Report at 1-2.

<sup>112</sup> CT Cube Amendment at 1

<sup>113</sup> CT Cube Letter at 1



the U-rating system.”<sup>114</sup> Finally, in its November 17, 2006 Report, CT Cube stated that only one of its hearing aid-compatible handset models included proper labels and inserts.<sup>115</sup>

34. We conclude that CT Cube has failed to demonstrate unique or unusual circumstances, or the existence of any other factor, warranting grant of the requested waiver pursuant to the Section 1.925(b)(3) standard. CT Cube’s November 17, 2006 Report reveals that CT Cube is not, in fact, in compliance with the hearing aid compatibility rules. Although CT Cube reported on January 26, 2006, that it had achieved compliance with the hearing aid compatibility rules by January 1, 2006, the CT Cube Letter does not report the date on which the carrier began offering the LG L1400i handset. Most significantly, the CT Cube November 17, 2006 Report indicates that, as of that date, only one of its handsets complies with the hearing aid compatibility labeling requirements. CT Cube has not provided sufficient basis **for** justifying why it has failed to come into full compliance with the hearing aid compatibility requirements as of November 17, 2006, notwithstanding the ability of most other GSM carriers, including other Tier III GSM carriers, to come into compliance by this date. As discussed above, the record indicates that compliant GSM handsets were available to small carriers between September and December 2005,<sup>116</sup> and that a broad array of GSM carriers offered certified compliant handsets, and complied with the Section 20.19(f) labeling requirements, well before November 17, 2006. CT Cube has failed to explain why it could not likewise achieve compliance with the hearing aid compatibility requirements, if not by the September 16, 2005 deadline, then at least within a shorter period after that deadline. CT Cube also suggests, but does not expressly state, that it may be in violation of the conditions associated with the relief offered pursuant to the *Cingular Waiver Order*.<sup>117</sup> Further, despite its failure to come into full compliance with the hearing aid compatibility requirements as of November 17, 2006, CT Cube has never requested an extension of its initial six-month waiver request, which would have expired on March 16, 2006. Based on this record, we find that CT Cube has not made the requisite showing to justify a waiver of the Commission’s hearing aid compatibility rules. We therefore deny the CT Cube Petition and refer CT Cube’s apparent violation of the hearing aid compatibility requirements to the Commission’s Enforcement Bureau.

## **B. Waiver Requests from Petitioners Offering CDMA Handset Models**

### **1. South Central Utah Telephone Association, Inc. (South Central Utah)**

35. As described in its petition, South Central Utah, a rural area telephone cooperative, is the licensee of Broadband PCS station KNLG223, serving the St. George, Utah Basic Trading Area (BTA) on the PCS F-block spectrum utilizing the CDMA air interface.<sup>118</sup> South Central Utah requested a waiver that would extend the September 16, 2005 compliance deadline by one year.<sup>119</sup> Like other waiver applicants, South Central Utah cited the unavailability of U3-rated handsets as grounds for its request.<sup>120</sup>

<sup>114</sup> *Id.*

<sup>115</sup> CT Cube November 17, 2006 Report at 2.

<sup>116</sup> *See* discussion of South Slope and Pine, *supra*

<sup>117</sup> *See* CT Cube Letter at 1 (stating that “CT Cube will provide detailed information on the status of its efforts to provide dual-band handsets that will be: [hearing aid-compatible] in the 850 MHz band as well as the 1900 MHz band, and on the status of its continued efforts to comply with the aforementioned return policy and consumer outreach conditions, in its May 17, 2006 HAC compliance report”).

<sup>118</sup> *See* South Central Utah Petition at 1-2.

<sup>119</sup> *Id.* at 1.

<sup>120</sup> *Id.* at 4 (asserting that the basis for the waiver request “is starkly simple and can be concisely stated: There are no HAC compliant digital wireless telephones available for purchase by Tier III wireless carriers, such as South Central Utah, that meet a U3 rating under the ANSI Standard C63.19 for radio frequency interference”).

South Central Utah's November 17, 2005 Report, however, stated, "[w]e are currently marketing six CDMA handsets that meet the M3 rating."<sup>121</sup> The six models included three Motorola models, two Nokia models, and one Kyocera model.<sup>122</sup> Its November 17, 2006 Report indicated that, as of that date, it had increased the number of its CDMA handsets meeting an **M3** or higher rating to **nine**.<sup>123</sup>

36. With respect to labeling, South Central Utah in its November 17, 2005 Report stated that it "is not involved in product labeling or the development of labeling standards."<sup>124</sup> South Central Utah added, however, that it "ha[d] been advised ... that all manuals and boxes shipped out of the Motorola distribution center after September 16, 2005 have HAC information on them," and that "Nokia advises that compliant models will include the 'M3' text designation on the product box label."<sup>125</sup> South Central Utah's May 17, 2006 Report again stated that it is not involved in labeling, but added that all eight of its hearing aid-compatible handsets "have some labeling to indicate that they are hearing aid compatible."<sup>126</sup> Specifically, five of its hearing aid-compatible handsets, the Motorola and Nokia models, had both external labels and internal explanation, while three handsets, the **LG** and Kyocera models, had only internal information."<sup>127</sup> Finally, in its November 17, 2006 Report, South Central stated that, of the nine hearing aid-compatible models it offered as of that date, the six Motorola and Nokia models were fully compliant with labeling requirements.<sup>128</sup> It stated that the two handsets from Kyocera and LG, respectively, had only information in the user's manual or a brochure inside the box, and South Central Utah was silent as to whether its ninth handset, a Palm model, had either label or internal explanation.<sup>129</sup>

37. Given that South Central Utah reported that it was offering six compliant handsets as of November 17, 2005, we conclude that South Central Utah came into compliance with the preliminary handset deployment benchmark as of November 17, 2005. Accordingly, with respect to South Central Utah's compliance with the preliminary handset deployment requirement, we grant South Central Utah a waiver *nuncpro tunc* to extend the deadline for compliance with Section 20.19(c)(2)(i) of the Commission's rules until November 17, 2005. We view this brief delay as *de minimis* and find that it will not unduly deprive South Central Utah's subscribers of access to hearing aid-compatible handsets.

38. With respect to the associated labeling requirements, however, we find that the record does not establish that South Central Utah has achieved compliance or merits a waiver. The South Central Utah November 17, 2005 Report indicates that the three Motorola handsets it offered complied with the labeling requirements. However, the Section 20.19(f) labeling requirements apply to all hearing aid-compatible handsets offered by a carrier. Further, although Section 20.19(c)(2) may require only that a Tier III carrier offer two hearing aid-compatible handset models per air interface, if the carrier chooses to provide a greater number of hearing aid-compatible handset models, each of those handset models must comply with the labeling requirements."<sup>130</sup> South Central Utah's November 17, 2005 Report indicates

<sup>121</sup> South Central Utah November 17, 2005 Report at 2.

<sup>122</sup> *Id.* (listing the Kyocera KX9, Motorola 262, Motorola 265, Motorola 710, Nokia 6015i and Nokia 6255i handset models).

<sup>123</sup> South Central Utah November 17, 2006 Report at 2.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> South Central Utah May 17, 2006 Report at 2.

<sup>127</sup> *Id.*

<sup>128</sup> South Central Utah November 17, 2006 Report at 2.

<sup>129</sup> *Id.*

<sup>130</sup> See 47 C.F.R. § 20.19(f).

that, as of November 17, 2005, only three of its six hearing aid-compatible models were compliant with labeling obligations. The May 17, 2006 Report establishes that only five of the eight hearing aid-compatible handsets were fully compliant with labeling requirements, the remaining three being only partially compliant.” Finally, the November 17, 2006 Report establishes that, as of that date, only six of nine hearing aid-compatible handsets were fully compliant with labeling obligations.” Thus, South Central Utah has not demonstrated that it has fully met its obligations under Section 20.19(f) even now. Moreover, South Central Utah has failed to demonstrate unusual or unique circumstances, or the existence of any other factor, warranting relief from the labeling requirement for a protracted indeterminate period.<sup>133</sup>

39. In addition, we find South Central Utah’s disclaiming involvement in labeling neither constitutes persuasive grounds for a waiver nor establishes its compliance with the Commission’s rules.<sup>134</sup> Section 20.19(f) imposes on both service providers and manufacturers the responsibility to ensure that hearing aid compatible handsets are properly labeled.” The dependence of service providers on manufacturers for handset labeling in the first instance does not excuse the service providers from taking steps to achieve compliance with the labeling requirements. The record does not establish that South Central Utah made reasonable efforts to obtain labeling from manufacturers for all of its hearing aid compatible handsets. Further, other Tier III carriers have been able to come into compliance with those requirements, and have been able to identify precisely when they achieved such compliance. Thus, we find that South Central Utah has not made the requisite showing to justify a waiver of Section 20.19(f) of the Commission’s rules. We therefore deny this aspect of the South Central Utah Petition and refer South Central Utah’s apparent violation to the Commission’s Enforcement Bureau.

## 2. Virgin Mobile, USA LLC (Virgin Mobile)

40. As described in its petition, Virgin Mobile began offering prepaid, “pay as you go,” wireless service in 2002, operating on the Sprint PCS all-digital CDMA wireless network, and targeting its service “to a previously underserved consumer demographic: younger, lower-usage customers who generally have lower incomes than typical subscribers of postpaid wireless services.”<sup>136</sup> In its petition, filed on September 16, 2005, Virgin Mobile explained that it was offering two hearing aid-compatible handsets as of that date (which coincided with the compliance deadline). However, as of that date, only one of the two handsets had received a formal certification of compliance.” As a result, Virgin Mobile requested that the Commission provide a six-month extension, until March 16, 2006, to allow Nokia, Virgin Mobile’s handset vendor, to obtain a compliance certification of the Nokia 2115i, the handset at issue, and to allow Virgin Mobile to subsequently comply with the associated labeling requirements.<sup>138</sup> Thereafter, Virgin Mobile amended its pending waiver request to seek extension of the compliance

<sup>131</sup> South Central Utah May 17, 2006 Report at 2.

<sup>132</sup> South Central Utah November 17, 2006 Report at 2

<sup>133</sup> As noted, the record still does not indicate when South Central Utah will achieve full compliance with the labeling requirements.

<sup>134</sup> See South Central Utah November 17, 2005 Report at 2 (stating that “South Central is not involved in product labeling or the development of labeling standards”); see also South Central Utah May 17, 2006 Report at 2.

<sup>135</sup> See 47 C.F.R. § 20.19(f); see also 47 C.F.R. § 20.19(a) (requirements of Section 20.19 apply both to providers of public mobile services and to manufacturers of handsets used in the delivery of those services).

<sup>136</sup> See Virgin Mobile Petition at 2.

<sup>137</sup> *Id.* at 1.

<sup>138</sup> *Id.* at 1, 6.

deadline until two months after the date that Nokia obtained certification for the Nokia 2115i handset.<sup>139</sup> On April 3, 2006, Virgin Mobile reported that Nokia had in fact obtained certification of the 2115i handset on January 9, 2006, and that “all packaging, labeling, and customer inserts for the ... handset currently reference and note the ... certification in accordance with” the Commission’s rules.<sup>140</sup>

41. We conclude that granting waiver relief to Virgin Mobile is warranted due to the delayed certification of the Nokia 2115i handset. We therefore grant Virgin Mobile the requested waiver of the hearing aid compatibility requirements, and defer the deadline for its compliance *nuncpro tunc* until March 9, 2006. After review and analysis of Virgin Mobile’s waiver petition, its November 17, 2005 Report,<sup>141</sup> and its April 3, 2006 Letter, we find that the carrier has made good faith, diligent efforts to come into full compliance with the hearing aid compatibility requirements as soon as possible. As noted, Virgin Mobile modified its waiver request to seek waiver for two months following certification of the Nokia 2115i handset, and later informed the Commission that such certification occurred on January 9, 2006, and that the carrier is compliant with the labeling requirements. Under the circumstances, we conclude that granting Virgin Mobile’s request to extend the compliance deadline until March 9, 2006 is a reasonable accommodation to market realities, consistent with precedent, and in accord with the Section 1.925(b)(3)(ii) waiver standard.

### 3. WUE, Inc. (WUE)

42. As described in its petition, WUE is the licensee of Cellular Radiotelephone Service Station KNKR319, serving rural areas located in the B2 Segment of the Nevada 5 – White Pine RSA, using a CDMA air interface.<sup>142</sup> WUE requested a waiver that would extend the September 16, 2005 compliance deadline by one year,<sup>143</sup> and cited the unavailability of U3-rated handsets as grounds for its request.<sup>144</sup> WUE’s November 17, 2005 Report states, “[u]pon information and belief, none of the handsets being served on [WUE’s] system meets a U3 ... rating.”<sup>145</sup> The WUE November 17, 2005 Report also states, “there are currently no handsets commercially available that meet a U3 ... rating.”<sup>146</sup> With respect to labeling, the WUE November 17, 2005 Report states, “[i]t is anticipated that product labeling will be handled by the handset manufacturers.”<sup>147</sup>

43. More recently, on April 25, 2006, WUE reported that, as of that date, it qualified for the Section 20.19(e)(1) *de minimis* exception because, “[a]t present, WUE markets only two CDMA digital wireless handsets, the LG Model VX3300 and the Audiovox Model 8910, neither of which meets a U3 (or M3T) rating ...”<sup>148</sup> In this regard, WUE further stated, “[o]n a going forward basis, WUE plans to offer only two digital wireless handset models.”<sup>149</sup> WUE disclosed, however, that “historically, it has not

<sup>139</sup> See Virgin Mobile Letter at 1-2.

<sup>140</sup> See Virgin Mobile April 3 Letter at 1-2.

<sup>141</sup> See Virgin Mobile November 17, 2005 Report.

<sup>142</sup> See WUE Petition at 1-2.

<sup>143</sup> *Id.* at 1.

<sup>144</sup> *Id.* at 4 (asserting that the basis for the waiver request “is starkly simple and can be concisely stated: There are no HAC compliant digital wireless telephones available for purchase by smaller carriers, such as WUE, that meet a U3 rating under the ANSI Standard C63.19 for radio frequency interference”).

<sup>145</sup> WUE November 17, 2005 Report at 1.

<sup>146</sup> *Id.* at 2.

<sup>147</sup> *Id.*

<sup>148</sup> WUE Supplement at 1.

<sup>149</sup> *Id.* at 2.

qualified at all times for the *de minimis* exception.”<sup>150</sup> WUE added that it has received no requests for hearing aid-compatible handsets and that, in the event it did receive such requests, it would, “depending on the customer’s wishes, either obtain a sampling of HAC telephones for the customer to try or, in the alternative, refer the customer to the nearest Verizon Wireless store to obtain a HAC telephone for use on WUE’s system.””

44. We conclude that WUE has failed to demonstrate unique or unusual circumstances, or the existence of any other factor, warranting grant of the requested waiver pursuant to the Section 1.925(b)(3) standard. WUE has not identified – or attempted to identify – the period(s) of time during which it was not in compliance with the hearing aid compatibility requirements. Rather, WUE states that it is currently in compliance and expects to remain so, by availing itself of the *de minimis* exception, and adds without explanation that “historically, it has not qualified at all times for the *de minimis* exception.” Further, the WUE Supplement provides no information regarding what efforts, if any, WUE has undertaken to come into compliance during those periods when it was ineligible for the *de minimis* exception. Indeed, WUE’s proposed “solution” – that it would obtain a sampling of compliant phones or refer its customer to a Verizon Wireless store – is unacceptable. Based on this record, we find that WUE has not made the requisite showing to justify a waiver of the Commission’s hearing aid compatibility rules. We therefore deny the WUE Petition and refer WUE’s apparent violation of the hearing aid compatibility requirements to the Commission’s Enforcement Bureau.

#### 4. CC Communications (CC)

45. As described in its petition, CC is a Tier III wireless CDMA carrier wholly owned by the county government of Churchill County, Nevada, and is the licensee of Cellular Radiotelephone Service Station KNKN223, serving rural areas principally located in the Nevada 1 – Humboldt RSA.<sup>152</sup> CC requested a waiver that would extend the September 16, 2005 compliance deadline by one year,<sup>153</sup> citing the unavailability of U3-rated handsets as grounds for its request.<sup>154</sup> CC’s November 17, 2005 Report stated “two of the digital wireless handsets marketed by [CC], the Motorola Models V262 and V710, meet a U3 (or M3) rating.””” With respect to labeling, the CC November 17, 2005 Report stated, “[i]t is anticipated that product labeling will be handled by the handset manufacturers.””<sup>156</sup>

46. On April 25, 2006, CC informed the Commission that it has been in compliance with the hearing aid compatibility requirements as of April 1, 2006.<sup>157</sup> Specifically, CC represented that, as of April 1, 2006, it has marketed at least six digital wireless handsets – the Motorola V262, Motorola V710, Motorola V3c, LG 3300, LG 4270, and Kyocera SOHO KX1 – that meet a U3 rating under ANSI Standard C63.19, and that, with respect to each of the six handsets, “the manufacturer-supplied packaging indicates that the units are hearing aid compatible.””<sup>158</sup>

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<sup>150</sup> *Id.* at 1.

<sup>151</sup> *Id.* at 2

<sup>152</sup> See CC Petition at 1-2

<sup>153</sup> *Id.* at 1.

<sup>154</sup> *Id.* at 4 (asserting that the basis for the waiver request “is starkly simple and can be concisely stated: There are no HAC compliant digital wireless telephones available for purchase by smaller carriers, such as CC, that meet a U3 rating under the ANSI Standard C63.19 for radio frequency interference”).

<sup>155</sup> CC November 17, 2005 Report at 2

<sup>156</sup> *Id.*

<sup>157</sup> CC Supplement at 1

<sup>158</sup> *Id.*

47. Given that CC reported the offer of two compliant handsets as of November 16, 2005, the Motorola V262 and V710, coupled with the information received on April 25, 2006, which lists these two models, along with additional models as certified compliant, we conclude that CC came into compliance with the preliminary handset deployment benchmark as of November 16, 2005. Accordingly, with respect to CC's compliance with the preliminary handset deployment requirement, we grant CC a waiver *nunc pro tunc* to extend the deadline for compliance with Section 20.19(c)(2)(i) of the Commission's rules until November 16, 2005. We view this brief delay as *de minimis* and find that it will not unduly deprive CC's subscribers of access to hearing aid-compatible handsets.

48. With respect to the associated labeling requirements, we find that CC came into compliance as of April 1, 2006. Nonetheless, CC has failed to demonstrate unusual or unique circumstances, or the existence of any other factor, warranting relief from the labeling requirements for a period of almost five months beyond November 16, 2005, the date by which it was offering certified compliant handsets." Thus, we find that CC has not made the requisite showing to justify a waiver of Section 20.19(f) of the Commission's rules. We therefore deny this aspect of the CC Petition and refer CC's apparent violation to the Commission's Enforcement Bureau.

## 5. IT&E Overseas, Inc. (IT&E)

49. As described in its petition, IT&E is the licensee of Broadband PCS Stations KNLF923 (Frequency Block D – Guam BTA), KNLG849 (Frequency Block D – Northern Mariana Islands BTA), WPOK677 (Frequency Block C – Guam BTA) and WPOK678 (Frequency Block C – Northern Mariana Islands BTA). It employs the CDMA air interface.<sup>160</sup> IT&E requested a waiver that would extend the September 16, 2005 compliance deadline by one year." Like other waiver applicants, IT&E cited the unavailability of U3-rated handsets as grounds for its request.<sup>162</sup> IT&E's November 17, 2005 Report stated, "IT&E is currently marketing two (2) CDMA handsets that meet a M3 rating."<sup>163</sup> With respect to handset labeling, the IT&E November 17, 2005 Report stated, "IT&E is not involved in product labeling or the development of labeling standards."<sup>164</sup>

50. On April 26, 2006, IT&E supplemented its petition and informed the Commission that it "currently markets four digital wireless handset models which meet a U3 (or M3T) rating for radio frequency interference" – the Kyocera Model SOHO KX1, Motorola Model V265, Motorola Model V276

<sup>159</sup> CC appears to believe that it is not responsible for ensuring that handsets are properly labeled. See CC November 17, 2005 Report at 2 (stating that CC "anticipate[s] that product labeling will be handled by the handset manufacturers"). As stated above, however, Section 20.19(f) imposes the responsibility to ensure that hearing aid compatible handsets are properly labeled on both service providers and manufacturers, and carriers must therefore make reasonable attempts to obtain labeling and inserts from manufacturers. See *supra*, ¶ 38. The record does not establish that CC made such efforts. Further, other Tier III carriers have been able to come into compliance with those requirements prior to April 1, 2006.

<sup>160</sup> See IT&E Petition at 1-2. We note that IT&E reported that the company "is in the process of supplementing its CDMA facilities with transmission facilities using the GSM air interface," but "at present, our GSM network is not operational and we are not currently offering any GSM handsets for sale to subscribers." IT&E November 17, 2005 Report at 1. On April 26, 2006, IT&E reported that its GSM facilities are active for initial testing, but will not be utilized to provide commercial service until the third quarter 2006. IT&E Supplement at 2.

<sup>161</sup> *Id.* at 1

<sup>162</sup> *Id.* at 4 (asserting that the basis for the waiver request "is starkly simple and can be concisely stated: There are no HAC compliant digital wireless telephones available for purchase by smaller carriers, such as IT&E, that meet a U3 rating under the ANSI Standard C63.19 for radio frequency interference").

<sup>163</sup> IT&E November 17, 2005 Report at 2 (listing the Kyocera SOHO KX1 and Motorola V265 handset models).

<sup>164</sup> *Id.*

and the Motorola Model V3c.<sup>165</sup> IT&E also reported that, with respect to each of the four handsets, “either the manufacturer-supplied packaging or labels attached by IT&E indicates that the units are hearing aid compatible.”<sup>166</sup>

51. Given that IT&E reported the offer of two compliant handsets as of November 14, 2005, the Kyocera SOHO KX1 and Motorola V265, coupled with the information received on April 25, 2006, which lists these two models, along with additional models offered by IT&E as certified compliant, we conclude that IT&E came into compliance with the preliminary handset deployment benchmark as of November 14, 2005. Accordingly, with respect to IT&E’s compliance with the preliminary handset deployment requirement, we grant IT&E a waiver *nunc pro tunc* to extend the deadline for compliance with Section 20.19(c)(2)(i) of the Commission’s rules until November 14, 2005. We view this brief delay as *de minimis* and find that it will not unduly deprive IT&E’s subscribers of access to hearing aid-compatible handsets.

52. With respect to the associated labeling requirements, we find that IT&E came into compliance as of April 26, 2006. Yet, IT&E has failed to demonstrate unusual or unique circumstances, or the existence of any other factor, warranting relief from the labeling requirements for a period of more than five months beyond November 14, 2005, the date by which it was offering certified compliant handsets. In addition, we find IT&E’s disclaiming responsibility for compliance with the labeling requirement because it is “not involved” in labeling is neither persuasive nor in compliance with the Commission’s rules.<sup>167</sup> Furthermore, the IT&E Supplement does not definitively demonstrate compliance with the labeling requirements, which, as discussed earlier, requires *both* labeling and additional information in the handset packaging. Thus, we find that IT&E has not made the requisite showing to justify a waiver of Section 20.19(f) of the Commission’s rules. We therefore deny this aspect of the IT&E Petition and refer IT&E’s apparent violation to the Commission’s Enforcement Bureau.

#### 6. Uintah Basin Electronic Telecommunications d/b/a UBET Wireless (UBET Wireless)

53. As described in its petition, UBET Wireless is a telephone cooperative that employs a TDMA air interface for the digital portion of its cellular system and a CDMA air interface for its Broadband PCS systems, and is the licensee of Cellular Radiotelephone Service Station KNKN236, serving a rural area in Utah, and of Broadband PCS Stations KNLG530, WPQZ730, WPQZ731, and WPSZ758, serving rural areas in Utah, Colorado and Wyoming.<sup>168</sup> UBET Wireless requested a waiver that would extend the September 16, 2005 compliance deadline by one year.<sup>169</sup> Like other waiver applicants, UBET Wireless cited the unavailability of U3-rated CDMA handsets as grounds for its

<sup>165</sup> IT&E Supplement at 1

<sup>166</sup> *Id.*

<sup>167</sup> IT&E appears to believe that it is not responsible for ensuring that handsets are properly labeled. *See* IT&E November 17, 2005 Report at 2 (stating that “IT&E is not involved in product labeling or the development of labeling standards”). As stated above, however, Section 20.19(f) imposes the responsibility to ensure that hearing aid compatible handsets are properly labeled on both service providers and manufacturers, and carriers must therefore make reasonable attempts to obtain labeling and inserts from manufacturers. *See supra*, ¶ 38. The record does not establish that IT&E made such efforts. Further, other Tier III carriers have been able to come into compliance with those requirements prior to the end of April 2006.

<sup>168</sup> *See* UBET Wireless Petition at 1-2.

<sup>169</sup> *Id.* at 1

request.”” UBET Wireless’s November 17, 2005 Report, however, stated that UBET Wireless “is in the process of overbuilding its cellular TDMA facilities with replacement CDMA facilities, although none of the cellular CDMA facilities are being placed into commercial service to date.”<sup>171</sup> Nonetheless, the UBET Wireless November 17, 2005 Report further stated that UBET Wireless “currently markets a number of digital wireless telephones, ... which meet a U3 (or M3) rating.”<sup>172</sup> With respect to labeling, the UBET Wireless November 17, 2005 Report stated, “[p]roduct labeling is presently being handled by the handset manufacturer, Motorola. It is anticipated that all product labeling for future HAC-compliant handset models activated on the system will be handled by the handset manufacturers.”<sup>173</sup>

54. More recently, on April 25, 2006, UBET Wireless informed the Commission that it has been in compliance with the hearing aid compatibility requirements “[s]ince February of 2006.”<sup>174</sup> Specifically, UBET Wireless represents that, since February 2006, it has marketed at least four digital wireless handsets – the Motorola V262, Motorola V266, Motorola V710, and Motorola V3c, that meet a U3 rating under ANSI Standard C63.19, and that with respect to each of the four handsets, “the manufacturer-supplied packaging indicates that the units are hearing aid compatible.”<sup>175</sup>

55. Given that UBET Wireless reported the offer of two compliant handsets as of November 16, 2005, the Motorola V262 and the Motorola V710, coupled with the information received on April 25, 2006, which lists these two models, along with additional models offered by UBET Wireless as certified compliant, we conclude that UBET Wireless came into compliance with the preliminary handset deployment benchmark as of November 16, 2005. Accordingly, with respect to UBET Wireless’s compliance with the preliminary handset deployment requirement, we grant UBET Wireless a waiver *nunc pro tunc* to extend the deadline for compliance with Section 20.19(c)(2)(i) of the Commission’s rules until November 16, 2005. We view this brief delay as *de minimis* and find that it will not unduly deprive UBET Wireless’s subscribers of access to hearing aid-compatible handsets.

56. With respect to the associated labeling requirements, the record reflects that UBET Wireless came into compliance sometime during February 2006. Yet, UBET Wireless has failed to demonstrate unusual or unique circumstances, or the existence of any other factor, warranting relief from the handset labeling requirements for a period of more than two months beyond November 16, 2005, the date by which it was offering certified compliant handsets.<sup>176</sup> Thus, we find that UBET Wireless has not made the requisite showing to justify a waiver of Section 20.19(f) of the Commission’s rules. We therefore deny this aspect of the UBET Wireless Petition and refer UBET Wireless’s apparent violation to the Commission’s Enforcement Bureau.

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<sup>170</sup> *Id.* at 5 (asserting that the basis for the waiver request “is starkly simple and can be concisely stated: There are no HAC compliant digital wireless telephones available for purchase by smaller carriers, such as UBET Wireless, that meet a U3 rating under the ANSI Standard C63.19 for radio frequency interference”).

<sup>171</sup> UBET Wireless November 17, 2005 Report at 1

<sup>172</sup> *Id.* (listing the Motorola V262, Motorola V265, Motorola V710 and Motorola T720).

<sup>173</sup> *Id.* at 2

<sup>174</sup> UBET Wireless Supplement at 1

<sup>175</sup> *Id.*

<sup>176</sup> UBET appears to believe that it is not responsible for ensuring that handsets are properly labeled. *See* UBET Wireless November 17, 2005 Report at 2 (stating that UBET Wireless “anticipate[s] that all product labeling ... will be handled by the handset manufacturers”). *As* stated above, however, Section 20.19(f) imposes the responsibility to ensure that hearing aid compatible handsets are properly labeled on both service providers and manufacturers, and carriers must therefore make reasonable attempts to obtain labeling and inserts from manufacturers. *See supra*, ¶ 38. The record does not establish that UBET made such efforts. Further, other Tier III carriers have been able to come into compliance with those requirements prior to the end of February 2006.